Criminal Law and Procedure Manual
2001 Edition

Supplement

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Michigan State Police
Training Division
Legal Training Section

(517) 322-6704
Criminal Law and Police Procedure Manual
2001
Supplement

Add to 4-32 and 4-3
Legal impossibility as a defense

📖 People v Thousand, 465 Mich. 149 (2001)

Undercover officers signed onto the Internet as a 14-year-old girl named "Bekka." While in a chat group the defendant contacted her and over a period of time became very sexually explicit with Bekka. At one point he ask her to meet him at a McDonald's so that they could go back to his place for the purposes of sex. While at the meeting place, he was arrested. He was subsequently charged with attempt to distribute of obscene material to a minor, solicitation to commit CSC 3 and sexually abusive materials. The Court of Appeals dismissed the charges of solicitation and attempt due to the legal impossibility of the crimes occurring. The Michigan Supreme Court held that legal impossibility is not a valid defense in Michigan.

HELD – "The defendant in this case is not charged with the substantive crime of distributing obscene material to a minor in violation of MCL 722.675. It is unquestioned that defendant could not be convicted of that crime, because defendant allegedly distributed obscene material not to a minor, but to an adult man. Instead, defendant is charged with the distinct offense of attempt, which requires only that the prosecution prove intention to commit an offense prohibited by law, coupled with conduct toward the commission of that offense. The notion that it would be 'impossible' for the defendant to have committed the completed offense is simply irrelevant to the analysis. Rather, in deciding guilt on a charge of attempt, the trier of fact must examine the unique circumstances of the particular case and determine whether the prosecution has proven that the defendant possessed the requisite specific intent and that he engaged in some act towards the commission of the intended offense."

As to the solicitation statute, the Court held that the charge was properly dismissed but not because of the impossibility defense. "Furthermore, although we do not agree with the circuit court or the Court of Appeals that legal impossibility was properly invoked by defendant as a defense to the charge of solicitation, we

nevertheless affirm the dismissal of this charge. There is no evidence that defendant solicited anyone to commit a felony or to do or omit to do an act which if completed would constitute a felony."

Add to page 4-4 under Statute of Limitations
Criminal D.N.A. – January 1, 2002

Requires the sheriff or investigating law enforcement agency to collect a DNA sample, prior to sentencing, from all convicted felons. Also requires the collection of DNA samples from the following misdemeanor violations:

- Enticing a child for immoral purposes.
- Disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.
- Indecent exposure.
- First or second prostitution violations.
- Leasing a house for purposes of prostitution.
- Female under the age of 17 in a house of prostitution.
  Taken for Legislative Update January through August 2001.

Add to page 4-5 under assault and 15-3 under assault and battery
Dating relationship included under Domestic Violence - MCL 750.81

Enrolled Senate Bill 723 (effective April 1, 2002)

Simple assault and battery

A person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than **93 days** or a fine of not more than $500.00, or both.

Domestic Relationships

An individual who assaults or assaults and batters his or her spouse or former spouse, **an individual with whom he or she has or has had a dating relationship**, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

Definition of Dating Relationship

As used in this section, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Previous convictions for enhancement purposes include the following:

- This section or an ordinance of a political subdivision of this state substantially corresponding to this section.
- Section 81a, 82, 83, 84, or 86.
- **A law of another state** or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

Add to page 4-5 under assault
For assault upon a correction's officer the imprisonment must be lawful

📖 People v Clay, 247 Mich. App. 322 (2001)

In this case the suspect was arrested for CCW. It was later determined that the officers had made an illegal search and the CCW charges were dropped. After he was lodged on the charge he assaulted a corrections officer. He was charged with a felony under MCL 750.197c, which prohibits assaulting an employee of a place of confinement while lawfully imprisoned. The Court of Appeals held that the felony charges would have to be dismissed because he had not been "lawfully imprisoned." Simple assault charges may have still been applicable.

Add to page 4-12 under Child Sexually Abusive Material
Counts of sexually abusive material may be based on each picture.

📖 People V. Harmon, C/A No. 226089 (December 4, 2001)

Defendant was convicted on four counts of engaging in a child sexually abusive activity or making child sexually abusive material in violation of M.C.L. 750. 145c(2). The defendant took nude photographs of two fifteen-year-old- girls with a digital camera in a studio located in his home. The prosecutor introduced four photographs, two of each girl. On appeal. the defendant raised several issues. First the defendant argued that the prosecutor presented insufficient evidence to sustain four convictions under the statute. Secondly, defendant argued that the prosecutor presented insufficient evidence to support the trial courts findings

that defendant knew, had reason to know, or reasonably should have been expected to know the ages of the victims or take reasonable precautions to determine their ages.

HELD- The Court affirmed the defendants conviction on the four counts holding that the prosecutor presented four photographs that the trial court specifically concluded were lascivious. “In light of this evidence we can discern no reason why the defendant could not be convicted of four counts of making child sexually abusive material.”

Regarding the defendant’s knowledge of the ages of the victims, the court again affirmed the conviction. One victim testified that she told the defendant she was 15 years old. The second victim testified that the defendant did not asked her age. Defendant testified that the victims forgot to bring their identification and he took nude photographs anyway, on the promise that the victims would supply the identification within seven days. Viewing this testimony in a light most favorable to the prosecutor, there was sufficient evidence for the jurors to conclude that the defendant failed to take reasonable precautions to determine the age of the victims.

Add to page 4-19
Juvenile Offenders and the Sex Offender Registration

📖 People v Rahilly, 247 Mich. App. 108 (2001)

Defendant was convicted of CSC fourth and sentenced pursuant to the Holmes Youthful Training Act. After serving his sentence, he requested that his name be removed from the Sex Offender Registration list. The trial court granted his motion but the Court of Appeals reversed.

“SORA provides that the term of the registration shall occur for twenty-five years from the time or registration or ten years following release from a state correctional facility, whichever is longer. There is no exception to this time frame for youthful trainee status. We cannot assume that this was an inadvertent omission by the Legislature.”

Add to page 4-20 under homicide
Euthanasia is not justifiable homicide

📖 People v Kevorkian, C/A No. 221758 (November 20, 2001)

The court declined to reverse defendant’s second-degree murder conviction on constitutional grounds because it refused to hold that

euthanasia was legal and found no principled basis for legalizing it. There was no meaningful precedent for expanding the right of privacy to include a right to commit euthanasia so that an individual can be free from intolerable pain and suffering. By expanding the right of privacy as suggested by defendant, the court concluded that it would, to a great extent, put the matter outside the arenas of public debate and legislative action. Further, by expanding the right in such a manner the court found it would inevitably involve the judiciary in deciding questions that are simply beyond its capacity.

Add to page 4-21 under manslaughter
Felonious Driving redefined

P.A. 134 of 2001 (Effective date 2-1-2002) - MCL 257.626c

A person who operates a vehicle upon a highway **or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles**, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a **serious impairment of a body function** of a person, but does not cause death, is guilty of felonious driving punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

Add to page 4-21 under manslaughter
Construction Zone Injuries – October 1, 2001

MCL 257.601b

Sec. 601b. (1) Notwithstanding any other provision of this act, a person responsible for a moving violation in a construction zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon is subject to a fine that is double the fine otherwise prescribed for that moving violation.

(2) A person who commits a moving violation that has criminal penalties and as a result causes injury to a person working in the construction zone is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both.

(3) A person who commits a moving violation that has criminal penalties and as a result causes death to a person working in the

construction zone is guilty of a felony punishable by a fine of not more than $7,500.00 or by imprisonment for not more than 15 years, or both.

5) Subsections (2) and (3) do not apply if the injury or death was caused by the negligence of the person working in the construction zone.

(6) As used in this section: (a) “Construction zone” means a designated work area described in section 627.

(b) “Emergency scene” means a traffic accident, a serious incident caused by weather conditions, or another occurrence along a highway or street for which a police officer, firefighter, or emergency medical personnel are summoned to aid an injured victim.

(c) “Moving violation” means an act or omission prohibited under this act or a local ordinance substantially corresponding to this act that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine.

Implement of Husbandry – MCL 257.601c

(1) A person who commits a moving violation that has criminal penalties and as a result causes injury to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) A person who commits a moving violation that has criminal penalties and as a result causes death to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $7,500.00, or both.

Add to page 4-27 under armed robbery
Armed robbery includes stealing from the presence of someone who has a superior right to possess the property.

📖 People v Rodgers, C/A No. 223130 (December 14, 2001)

Defendant robbed a muffler store where there were three people present. One was the manager and the other two were employees. The defendant was armed with a shotgun and grabbed the money out of the cash register. He was convicted of three counts of armed robbery but argued that the only one he robbed was the manager since he had authority over the register. The Court of Appeals disagreed.

HELD – "In the present case, it is clear that defendant assaulted all three employees with a sawed-off shotgun and stole money from the company's cash drawer, in the 'presence' of all three employees. It is reasonable to assume that VanAssche, as store manager, had a superior right to possess the company's cash, when compared to Babala and Fournier. However, it is also clear that all three employees had a superior right to possess the company's cash, when compared to defendant. We conclude that the prosecutor presented sufficient evidence to support defendant's three armed robbery convictions."

Add to page 5-18
Larceny by conversion

📖 People v Mason, 247 Mich. App. 64 (2001)

Defendant in this case operated a mobile home company. On four different occasions he signed a contract with buyers to sell them a home. As part of the contract he would require a partial down payment. On each occasion he would take the down payment and deposit it in his personal account rather than his two business accounts. Shortly after the transactions occurred, the company closed. The homes where not delivered and the down payments were not returned. Mason was charged with larceny by conversion but the trial court would not bind him over on the grounds that it was more of a civil complaint and not criminal. The Court of Appeals reinstated the charges.

HELD – "The evidence adduced at the preliminary examinations presents probable cause to believe that (1) the property at issue had value because it was money, (2) the money did not belong to Mason, (3) each complainant delivered the money to Mason, (4) Mason fraudulently converted the money to his own use when he deposited it in his personal bank account without completing the mobile home sales for each complainant, and (5) Mason intended to deprive the complainants of their money permanently when he ceased operating Mason Homes without refunding the money to them."

Add to page 5-19
Fraudulently obtaining agriculture land

P.A. 132 of 2001 (Effective January 1, 2002) – MCL 285.279

A person shall not, with the intent to defraud or cheat and designedly by false pretenses, including false statement or representation, obtain money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal, property, or the use of an instrument, facility, article, or other valuable thing or service provided under this act, including participation in a program established under this act.

Less than 200 ……93 day misd
$200 - $1,000 …… 1 year misd
$1,000 - $20,000 …….. 5 year felony
Over $20,000 …….. 10 year felony

Add to page 6-1
Knowledge of amount for drug cases

📖 People v Mass, 469 Mich 615 (2001)

Defendant was convicted as an aider and abettor in the delivery of 225 grams or more but less than 650 grams of cocaine as well as with conspiracy to commit delivery of the same amount of cocaine. In both charges he argued that he did not know he was dealing with 225 grams or more. The Michigan Supreme Court held the following:

HELD - "A defendant may be properly convicted of delivery of 225 grams or more but less than 650 grams of cocaine on an aiding and abetting theory, even if he does not know the amount of drugs to be delivered, as long as the jury finds that at least 225 grams of cocaine were delivered."

"A defendant charged with conspiracy to deliver 225 grams or more but less than 650 grams of cocaine is entitled to have the jury instructed that the defendant is guilty only if the prosecution has proved beyond a reasonable doubt that defendant conspired to deliver, not just some amount of cocaine, but at least 225 grams of cocaine."

Add to page 6-2
Social sharing and delivery

📖 People v Schultz, 246 Mich. App. 695 (2001)

Defendant purchased heroin that she shared with her boyfriend. She injected the heroin into his arm and he subsequently died. She was charged with manslaughter and delivery of a controlled substance. The jury acquitted her of the manslaughter charge but

did convict her of the delivery charge. She requested the charges be dropped because delivery should not apply to social drug users. The Court of Appeals disagreed.

HELD – "Defendant's social sharing of the cocaine with the decedent fell within the plain, broad scope of a 'transfer' within MCL 333.7105(1). Had the Legislature wished to authorize for social sharers of controlled substances, like defendant, lesser punishments than those applicable to commercial drug traffickers, it could have done so explicitly. To the contrary, it employed the broad term 'transfer' to define the culpable element of delivery. The plain language of MCL 333.7105(1) would encompass defendant's act of sharing her supply of heroin with the decedent."

Add to page 6-9 above explosives
Statutory interest is <u>not</u> required under MCL 600.6013 when money is ordered back to the claimant.

📖 <u>People v $176,598.00</u>, 465 Mich. 382 (2001)

Police seized and attempted to forfeit a large amount of money. The case was involved in the court system for a number of years. It was eventually determined that the search, which located the money, was illegal and the money was ordered to be returned to the owner. The owner then sued for interest on the money under MCL 600.6013. The Michigan Supreme Court denied the request.

HELD – "We conclude that the order directing return of the seized funds to Wilson was not a money judgment in a civil action under § 6013. Accordingly, we reverse the judgment of the Court of Appeals and reinstate the Wayne Circuit Court's February 25, 1997, order denying interest."

Add to page 6-12
Terrorism Legislation

P.A. 135 of 2001 (effective 10-23-01)

MCL 750.200l creates a five-year felony to "commit an act with the intent to cause an individual to falsely believe that the individual has been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material or harmful radioactive device."

- Five year felony

- Subject may be responsible for costs of response.

P.A. 136 of 2001 (effective 10-23-01)

Increased penalties under MCL 750.200j from a misdemeanor to felony for manufacturing, delivering, possessing, transporting, placing, using, or releasing for an unlawful purpose a:

- Chemical irritant.
- A smoke device.
- An imitation harmful substance or device.

Add to page 6-18 under CCW free zones
A.G. opinions on CCW issues

OAG, 2002, No. 7098 (January 11, 2002)

The first question asked was whether a police officer, including a reserve police officer, is required to obtain a concealed pistol license under section 6 of the Concealed Pistol Licensing Act in order to lawfully carry a concealed pistol. "It is my opinion, that a police officer, including a reserve police officer, is exempt from the licensing requirements of the Concealed Pistol Licensing Act if the officer possesses the full authority of a peace officer and is regularly employed and paid by a police agency of the United States, this state, or a political subdivision of the state." The opinion also stated that the phrase "regularly employed" has not been defined by the Legislature. "The meaning of this phrase, however, was addressed in OAG, 1973-1974, No 4792, p 78 (August 27, 1973), which concluded that in order to be considered 'regularly employed,' a peace officer's work should be 'substantial rather than merely occasional' and should form 'at least a large part of his daily activity.'"

The second question asked was if a police officer who is exempt from the licensure requirements of the Concealed Pistol Licensing Act, by voluntarily obtaining a license under that Act, becomes subject to the Act's gun-free zone restrictions, either while on or off duty. "It is my opinion that a police officer who is exempt from the licensing requirements of the Concealed Pistol Licensing Act, but who voluntarily obtains a concealed pistol license under that Act, is not subject to the act's gun-free zone restrictions unless the officer is off-duty and is relying solely on the authority of that license."

OAG, 2002, No. 7097 (January 11, 2002)

The questioned asked was whether a private investigator licensed to carry a concealed pistol is, by reason of section 234d of the Michigan Penal

Code, exempt from the gun-free zone restrictions imposed by section 50 of the Concealed Pistol Licensing Act.

"It is my opinion, therefore, that a private investigator licensed to carry a concealed pistol is not, by reason of section 234d of the Michigan Penal Code, exempt from the gun-free zone restrictions imposed by section 50 of the Concealed Pistol Licensing Act."

Add to page 6-23
Carrying a firearm while under the influence

P.A. 135 of 2001 (Effective 2-1-2002) – MCL 750.237

(1) An individual shall not carry, have in possession or under control, or use in any manner or discharge a firearm under any of the following circumstances:

(a) The individual is **under the influence** of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The individual has an alcohol content of **0.08 or more** grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) Because of the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the individual's ability to use a firearm is **visibly impaired**.

- 93 day misdemeanor

- **5 year felony** if causes **serious impairment of a body function** of another individual. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.
(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
(c) Loss of an eye or ear or of use of an eye or ear.
(d) Loss or substantial impairment of a bodily function.
(e) Serious visible disfigurement.
(f) A comatose state that lasts for more than 3 days.
(g) Measurable brain damage or mental impairment.
(h) A skull fracture or other serious bone fracture.
(i) Subdural hemorrhage or subdural hematoma.
(j) Loss of an organ.

- **15 year felony** if causes the **death** of another individual by the discharge or use in any manner of a firearm

(5) A peace officer who has probable cause to believe an individual violated subsection (1) may require the individual to submit to a chemical analysis of his or her breath, blood, or urine. However, an individual who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not required to submit to a chemical analysis of his or her blood.

(6) Before an individual is required to submit to a chemical analysis under subsection (5), the peace officer shall inform the individual of all of the following:

(a) The individual may refuse to submit to the chemical analysis, but if he or she refuses, the officer may obtain a court order requiring the individual to submit to a chemical analysis.

(b) If the individual submits to the chemical analysis, he or she may obtain a chemical analysis from a person of his or her own choosing.

(7) The failure of a peace officer to comply with the requirements of subsection (6) does not render the results of a chemical analysis inadmissible as evidence in a criminal prosecution for violating this section, in a civil action arising out of a violation of this section, or in any administrative proceeding arising out of a violation of this section.

(8) The collection and testing of breath, blood, or urine specimens under this section shall be conducted in the same manner as OUIL/OUID.

(9) Subject may be charged with other violations that arise out of the same transaction.

Add to page 6-23
Weapons in airports - MCL 259.208

An individual shall not possess, carry, or attempt to possess or carry any of the following in a sterile area of a commercial airport:

(a) Firearm.
(b) Explosive.
(c) Knife with a blade of any length.
(d) Razor, box cutter, or item with a similar blade.
(e) Dangerous weapon.

(2) Except as provided in subsection (3), an individual who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) An individual who violates subsection (1) while doing any of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both:

(a) Getting on or attempting to get on an aircraft.
(b) Placing, attempting to place, or attempting to have placed on an aircraft an item listed in subsection (1).
(c) Committing or attempting to commit a felony.

(4) This section does not apply to any of the following:

(a) A peace officer of a duly authorized police agency of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States.

(b) An individual regularly employed by the department of corrections and authorized in writing by the director of the department of corrections to possess or carry an item listed in subsection (1) during the performance of his or her duties or while going to or returning from his or her duties.

(c) A member of the United States army, air force, navy, marine corps, or coast guard while possessing or carrying an item listed in subsection (1) in the line of duty.

(d) A member of the national guard, armed forces reserves, or other duly authorized military organization while on duty or drill or while possessing or carrying an item listed in subsection (1) for purposes of that military organization.

(e) Security personnel employed to enforce federal regulations for access to a sterile area.

(f) A court officer while engaged in his or her duties as a court officer as authorized by a court.

(g) An airline or airport employee as authorized by his or her employer.

Add to page 6-25 under felon in possession
Gun does not have to operable for felon in possession of firearm

📖 People v Brown, C/A No. 231354 (January 22, 2002)

A judge in this case dismissed felon in possession of firearm charges because the firearm was inoperable. The Court of Appeals reversed. "We cannot find that the Legislature intended that the felon-in-possession statute apply only to operable firearms. The statute provides that a convicted felon 'shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state . . .' MCL 750.224f(1). The statutory language is broad, and is clearly intended to keep any and all handguns out of the hands of convicted felons. In our opinion, a handgun need not be currently operable in order to qualify as a 'firearm' for purposes of the felony-firearm statute."

Add to page 6-30
MIP charges where the defendant drank the alcohol in Canada.

📖 People v Rutledge, C/A No. 233990 (February 15, 2002)

The nineteen-year-old defendant in this case was a passenger in a vehicle. He and his friends had been in Canada drinking and when they returned to Michigan they were pulled over and he was subsequently charged with MIP under 436.1703(1). The question presented before the Court of Appeals was whether or not the defendant possessed or consumed alcoholic liquor in Michigan when he lawfully drank in Canada.

"The commonly accepted meaning of 'consume' as it relates to a beverage means to drink or physically ingest the beverage. For example, a person would not say that he is still consuming milk an hour after breakfast because the milk is digesting in his body. Similarly, a person does not 'possess' a beverage once it has been ingested and is digesting. One no longer has control over the beverage as it is digesting. We conclude that minors who legally ingest alcohol in a jurisdiction outside Michigan and then return to Michigan (e.g., as passengers in a vehicle) with the alcohol in their bodies have not violated the minor in possession statute. If the Legislature intended to criminalize this conduct, it could easily have done so or can amend the statue to include it."

Double Jeopardy does not prohibit charging a subject for MIP and possession of marijuana.

📖 People v Stark, C/A No. 233043 (February 22, 2002)

Officers arrested defendant for being a minor in possession of alcohol and possession of marijuana. He was issued a citation for MIP and the marijuana charge was referred to the prosecutor's

office. The subject admitted responsibility to the MIP charge and then the prosecutor filed a petition charging him with the marijuana charge. The defendant argued that he could not be charged with marijuana under double jeopardy.

HELD – Double jeopardy prohibits successive prosecutions if the offenses are part of the, "Same criminal episode and involved laws to prevent the same or similar harm or evil, not substantially different, or a very different kind of, harm or evil." In this case it was agreed that the two charges arose out of the same criminal transaction but the court held that the statues did not aim at preventing the same harm or evil. "We conclude that the two laws at issue here were not intended to prevent the same or similar harm or evil but, instead, a substantially different harm or evil. The minor in possession statute seeks to prevent harms associated with the use of alcohol by persons lacking the maturity necessary to do so responsibly. For example, it seeks to reduce underage drinking and, by extension, the fatalities and serious injuries caused by teenage drunk driving. In contrast, statutes such as that which outlaws marijuana possession are intended to prohibit the use of substances themselves considered physically harmful under any circumstance, and to stem the further criminal acts and social losses such use can cause."

Add to page 7-12
Making a false police report

📖 People v Chavis, 246 Mich. App. 741 (2001)

The defendant in this case was carjacked. He immediately reported the crime to the police but lied as to the location of the incident because it had occurred near a crack house and he did not want the police to know why he had been in the area. He was charged with making a false police report. The Court of Appeals dismissed the charges.

HELD – "Here, the statute proscribes the intentional making of a false report of the commission of a crime. MCL 750.411a(1). The plain language of the statute provides that those who make police reports falsely claiming that a crime has been committed are guilty of making a report of a false crime. To construe the statute to encompass false information concerning the details of an actual crime would be a significant departure from the plain language of the statute. Because the false information reported by defendant in the present case did not pertain to whether a crime occurred, the

conviction for filing a false report of the commission of a crime cannot be sustained."

Add to page 7-16
Gross Indecency – Overt sexual act

📖 People v Drake, 246 Mich. App. 637 (2001)

Defendant invited minor girls to participate in a contest where they could win $5,000. He stated that they could win various points for different activities including beating him, spitting on him and his food, and providing him with urine, feces and used tampons. The girls were also given money and cigarettes. The girls observed the defendant eat the urine and feces and would collectively beat him. The girls and defendant testified that they were fully clothed during the activities with the defendant and that although he "got high" from these activities the girls never saw him sexually gratify himself or engage in any overt sexual touching or contact with them.

Based on these activities he was charged with gross indecency. The trial court dismissed the charges because there was no overt sexual act. The Court of Appeals reversed and reinstated the charges. "In order to constitute grossly indecent behavior, the acts must be overt in the sense that they are open and perceivable. The motivation for the behavior can be inferred from the totality of the circumstances, and should be considered on a case by case basis. Clearly, it is easier to establish the sexual motivation for the behavior if the act in issue involves sexual intercourse, oral sexual stimulation, masturbation, or the touching of another person's genitals or anus. Nonetheless, the sexual nature of the activity can be inferred even in the absence of such behavior." Based on the activities and the testimony that the defendant "got high" from the contact, there was sufficient evidence to bind him over on gross indecency charges.

Gross Indecency – Public Masturbation

📖 People v Bono, C/A No. 227278 (January 4, 2001)

Security guards at a Meijer's store peered under the handicapped stall in the public restroom and observed a subject kneeling on the floor with his pants and underwear around his ankles. Another subject was sitting on the toilet in the adjacent stall. The second subject was "moving his arm up and down near the bottom of the handicapped stall" where the other subject was kneeling. The officer did not actually see the two touch each other and did not see

either defendant's penis. They were both charged with gross indecency.

The question presented was whether masturbation in public between consenting adult males is grossly indecent. The court held that following previous case law gross indecency includes an "ultimate sex act committed in a public place." The court remanded the case to the trial judge and held that if the facts alleged by the prosecutor were true then the conduct would fall under gross indecency. The court also modified the jury instructions for gross indecency to include acts of masturbation.

Add to page 7-21
Obstruction of Justice

📖 People v Sexton, C/A No. 224917 (March 1, 2002)

Two subjects by the names of Kent Sexton and Frank Slavik were arrested for armed robbery after police received information against them from a third person. The two were subsequently released on bond and got together to discuss their case. Sexton stated to Slavik that they would have a lot better chance at trial if the key witness did not testify. He also stated that he knew a subject that would kill the witness before trial. After the discussion Mr. Slavik informed his lawyer who in turned informed the police of the conversation. Officers met with Slavik and placed a recording device on him for a meeting with the hit man. During the conversation, the subject described the different ways he was going to try to kill the witness. Sexton was subsequently charged with solicitation to murder, conspiracy to murder, conspiracy to obstruct justice and common law obstruction of justice.

Sexton first argued entrapment. The Court of Appeals disagreed. "Entrapment occurs if (1) the police engage in impermissible conduct that would induce an otherwise law-abiding person to commit a crime in similar circumstances, or (2) the police engage in conduct so reprehensible that it cannot be tolerated by the court. Entrapment will not be found where the police do nothing more than present the defendant with the opportunity to commit the crime of which he was convicted. We reject defendant's contention that police exerted excessive control over Slavik. First, the Michigan State Police became involved in this case only after Slavik sought guidance from his attorney, his attorney initiated contact with police and Slavik agreed to cooperate with the investigation to prevent Gross's death. No evidence suggests that police controlled Slavik's activities or behavior or that they pressured him into taking part in

the investigation. Further, though Sergeant Lipscomb asked Slavik to talk to defendant, Slavik specifically testified that Sergeant Lipscomb did not tell him what to say to defendant or what information he should try to elicit. Indeed, the police were involved only to the extent that they listened to defendant talk about his plan to have Gross killed, without prompting or coercion by Slavik. Thus, evidence strongly repudiates any indication that the police used Slavik to manufacture a crime or to induce defendant to discuss his role in it."

Obstruction of Justice charges

Sexton also argued that he did not commit obstruction of justice. The Court of Appeals disagreed. "Intimidating a witness in judicial proceedings is an indictable offense at common law, associated with the concept of obstructing justice. Obviously, therefore, physically interfering with the witness' ability to testify, especially by murdering the witness, clearly is an offense recognized at common law that constitutes obstruction of justice."

Add to page 7-24
Resisting and Obstructing – Lying to a police officer

📖 People v Vasquez, 465 Mich. 83 (2001)

Officers responded to a loud party complaint and contacted a subject who was urinating on the front lawn of a residence. The officer suspected that the subject was an intoxicated minor and asked him for his name and age. The subject stated his name was John Wesley Chippeway and that he was sixteen-years-old. It was later determined that the subject was in fact Mark John Vasquez and that he was seventeen years old. The prosecutor charged him with minor in possession and resisting and obstructing under 750.479. The question presented was whether a mere lie to an officer attempting to keep the peace could constitute R and O.

HELD - The Michigan Supreme Court first held that the officer was in fact keeping the peace at the time of the incident. "It is clear that, at the time defendant lied to the officer, the latter was responding to suspected criminal activity, which constitutes an ordinary police function. Because the officer was performing such a lawfully assigned function when he questioned defendant, the officer was attempting to 'keep the peace' within the meaning of the 'resisting and obstructing' statute, when defendant lied to him."

The next issue is whether the defendant obstructed when he lied to the officer. In reviewing the statute the Court held that for obstruction there must be some type of physical or threatened physical conduct on the part of the defendant. "Michigan's 'resisting and obstructing' statute proscribes threatened, either expressly or impliedly, physical interference and actual physical interference with a police officer. Defendant's conduct did not constitute threatened or actual physical interference. Therefore, defendant did not "obstruct" the police officer, within the meaning of MCL 750.479, when he lied to him. Mere lies are insufficient to trigger a violation."

Leaving the scene of an accident

SB 469 (Effective 2-1-2002) – MCL 257-716

(1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon either public or private property, when the property is open to travel by the public, resulting in serious impairment of a body function or death of a person shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled. The stop shall be made without obstructing traffic more than is necessary.

Penalties

- Five year felony
- 15 year felony if results in death

Add to page 8-6 under prejudicial evidence
Placing witnesses in shackles during testimony

📖 People v Banks, C/A No. 225052 (January 15, 2002)

During a robbery trial a witness for the defense was called to testify. The witness was in prison at the time. The court asked the officer in charge of the witness if he should remain in handcuffs. The officer stated that he preferred that they stay on. The subject then testified. The Court of Appeals held that a mere preference from law enforcement was not enough reason to maintain a witness in handcuffs. The officer never testified that the witness pose a threat of escape or threat to security to others in the courtroom. The court must present a compelling reason to maintain a witness in handcuffs.

Add to page 8-7 under hearsay rule

One who knowingly waives his rights may not seek appellate review of his claimed deprivation of those rights since his waiver had extinguished any error.

📖 People v. Riley, MSC No. 117837 (December 07, 2001)

Defendant was charged with felony murder. During the trial, he called only one witness, Ms. McKinney, who was the mother of David Ware, the man whom the defendant alleged was the actual killer. Ms. McKinney had no personal knowledge concerning the death of Seaton, but had earlier told police of incriminating statements made to her by her son. It was hoped that the testimony of McKinney would bolster the defense claims that Ware alone was the killer.

Prior to her testimony, the defendant was advised by counsel that the testimony of McKinney could also incriminate him. The defendant stated he understood this and was willing to take the risk. During her testimony, McKinney not only told the jury of her son's incriminating statements but also gave details concerning the defendants active participation in the binding and subduing of the decedent. Defendant was found guilty and sentenced to mandatory life in prison. He argued on appeal that McKinney's testimony was inadmissible hearsay.

The Supreme Court held that defendants right to a trial free from such hearsay testimony was affirmatively waived. The defendant knew the risk of McKinney's testimony and knowingly accepted the risk, asking that McKinney testify. The Court defined waiver as the "intentional relinquishment or abandonment of a known right". One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error.

Add to page 9-3 under arrests without a warrant
SB 735 – MCL 764.15a (effective 4-1-2002)

Sec. 15a. A peace officer may arrest an individual for violating section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act regardless of whether the peace officer has a warrant or whether the violation was committed in his or her presence if the peace officer has or receives positive information that another peace officer has reasonable cause to believe both of the following:
(a) The violation occurred or is occurring.

(b) The individual has had a child in common with the victim, resides or has resided in the same household as the victim, **has or has had a dating relationship with the victim**, or is a spouse or former spouse of the victim. **As used in this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.**

Add to page 9-3 under Arrests without a warrant
SB 758 – MCL 764.15(g) (effective 4-1-2002)

The peace officer has reasonable cause to believe the person is an escaped convict, has violated a condition of parole from a prison, has violated a condition of a pardon granted by the executive, **or has violated 1 or more conditions of a conditional release order or probation order imposed by a court of this state, another state, Indian tribe, or United States territory.**

Add to page 9-4 under PPOs
SB 753 – MCL 764.15b (effective 4-1-2002)

A peace officer, without a warrant, may arrest and take into custody an individual when the peace officer has or receives positive information that another peace officer has reasonable cause to believe all of the following apply:

- A personal protection order or **valid foreign protection order** has been issued
- The person is in violation ……

Add to page 9-7 under fingerprinting
SB 478 – MCL 28.243a (effective 4-1-2002)

A person shall not refuse to allow or resist the taking of his or her fingerprints if authorized or required under this act

- 90 day misdemeanor or $500.00

Juveniles - PA 187 – 188 of 2001 (April 1, 2002)

Except as provided in subsection (3), immediately upon the arrest of a person for a felony or for a misdemeanor violation of state law for which the maximum possible penalty exceeds 92 days' imprisonment or a fine of $1,000.00, or both, **or for a juvenile offense, other than a juvenile offense for which the maximum possible penalty does not exceed 92 days' imprisonment or a fine of $1,000.00**, or both, the arresting law

enforcement agency in this state shall take the person's fingerprints and forward the fingerprints to the department within 72 hours after the arrest.

"Juvenile offense" means an offense committed by a juvenile that, if committed by an adult, would be a felony, a criminal contempt conviction under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, a criminal contempt conviction for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, or a misdemeanor.

SB 721 – MCL 28.243 (effective 10-1-2002)

Immediately upon arrest, officers must fingerprint a person arrested for a PPO violation including a violation for a foreign protection order.

Add to page 9-8 under officer's authority outside jurisdiction
An arrest made without statutory authority does not automatically suppress the evidence seized.

📖 People v Hamilton, MSC No. 118615 (January 23, 2002)

A police officer that was working out side of his jurisdiction observed a vehicle operating without taillights. He also observed the vehicle leave the pavement and briefly touch the shoulder of the roadway. The officer stopped the vehicle on suspicion of the driver being OUIL. After failing his dexterity tests the driver was arrested or OUIL 3rd. The defendant argued that the arrest was illegal and thus the charges should be dismissed. The officer was not working in conjunction with another officer with jurisdiction the time of the arrest under MCL 764.2a.

The Michigan Supreme Court held that even though the officer violated state law by making the arrest he did not violate the Fourth Amendment requiring the evidence to be suppressed because the officer did have probable cause. "It is clear from previous decisions of this Court that a statutory violation like the one in this case does not necessarily require application of an exclusionary rule. The question in such cases is whether the Legislature intended to apply the drastic remedy of exclusion of evidence. We find no indication in the language of MCL 764.2a that the Legislature intended to impose the drastic sanction of suppression of evidence when an officer acts outside the officer's jurisdiction. Rather, we believe that the language supports the analysis of several Court of Appeals decisions that the statute was intended, not to create a new right of criminal defendants to exclusion of evidence, but rather to 'protect

the rights and autonomy of local governments' in the area of law enforcement."

Local officers who are deputized have authority outside their local jurisdiction

📖 People v VanTubbergen, C/A No. 226082 (January 22,2002)

Hope College Public safety officers stopped a subject for erratic driving on a public street in the City of Holland. The Ottawa County Sheriff's Department had deputized the officers. The subject was subsequently arrested for OUIL and challenged whether the officers had the authority to make the stop and arrest because the incident had not occurred on college property and was outside the scope of the officer's authority. The Court of Appeals disagreed.

"We therefore hold that the statutes relied on by defendant do not preclude the Ottawa County sheriff from appointing employees of a religiously affiliated college as deputy sheriffs with full arrest powers extending to violations of state law on public streets…. We conclude that it is permissible under state law for the Ottawa County sheriff to appoint Hope College public safety officers as deputy sheriffs with the power and authority to enforce the laws of the state on public property." The Court also held that it did not violate the establishment of religion clauses of the United States or Michigan Constitutions for the sheriff to appoint employees of a religiously affiliated college as deputy sheriff's with full police powers extending to violations on public streets.

Add to page 9-13 under MCL 780.582a
20 hours removed

(1) A person shall not be released on an interim bond as provided in section 1 or on his or her own recognizance as provided in section 3a**, but shall be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate if either of the following applies:**

(a) The person is arrested without a warrant under section 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15a, or a local ordinance substantially corresponding to that section.

(b) The person is arrested with a warrant for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act and the person is a spouse or former spouse of the victim of the violation,

has or **has had a dating relationship with the victim** of the violation, has had a child in common with the victim of the violation, or is a person who resides or has resided in the same household as the victim of the violation. As used in this subdivision, "dating relationship" means that term as defined in section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

Add to page 9-13 under custodial traffic arrests.
SB 735 – MCL 764.9c (effective 4-1-2002)

Sec. 9c. (1) Except as provided in subsection (3), if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, instead of taking the person before a magistrate and promptly filing a complaint as provided in section 13 of this chapter, the officer may issue to and serve upon the person an appearance ticket as defined in section 9f of this chapter and release the person from custody.

(3) An appearance ticket shall not be issued to any of the following:

- A person arrested for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81, if the victim of the assault is the offender¹s spouse, former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender. As used in this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.
- A person subject to detainment for violating a personal protection order.
- A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release.

Add to page 10-23 under public safety

📖 U.S. v Talley, 2001 FED App 0438P (6th Cir)

Officers went to a residence to execute an arrest warrant. When they knocked on the door a subject looked out and they heard a loud commotion inside. The person wanted on the warrant then opened the door and he was told to lie down on the floor. The

officers saw movement behind the subject and then observed two other heads “pop up” down the hall and then disappear. As the officer stepped inside he observed a magazine for a semi automatic pistol and bullets lying on the floor. The officer then asked the subject at the door, “Where is the gun?” The subject stated the gun could be located in the vacuum cleaner. The gun was located and in the process the officer also located cocaine.

The defendant argued that he should have been given Miranda warnings before he was asked the location of the gun. The Sixth Circuit disagreed. “We cannot agree with the district court that concern for safety did not justify Officer Rush stepping into the home upon seeing the two shadowy figures in the rear of the hallway. The officer had an articulable fact at his disposal indicating these individuals posed a safety risk; namely, that he had already been misinformed about their presence. Officer Rush had previously shouted for everyone to come out. Officer Rush was understandably surprised and threatened by the appearance of the two shadowy figures. This potential threat justified Rush's entry into the residence; and through that entry, Officer Rush discovered the magazine and ammunition. Once Officer Rush had seen the magazine, he had reason to believe a gun was nearby and was justified, under Quarles, in asking his question prior to administering a Miranda warning.”

Add to page 14-1 under OUIL statute
OUID cases and blood

As of January 1, 2002 blood is the preferred sample for all OUID cases. Urine remains the preferred sample for CSC cases as it has a longer window of detection for potential date-rape drugs. (Taken from official correspondence from the director on December 10, 2001.)

Add to page 14-10 under implied consent
Invalid sample reading from data master

📖 People v Fosnaugh, C/A No. 225555 (November 27, 2001)

A suspected drunk driver agreed to submit to a breath test. The first test registered a .18. The second test returned the message, “Invalid sample.” A third test was not given and the subject was lodged. The defense argued that a third test should have been given and since it was not, the results should be suppressed. The Court of Appeals disagreed.

HELD - Under the clear language of the rule, a third test was not required under the circumstances of this case. A third test is only required when the variance between the first and second test is larger than the amount provided for in the table. In this case, that would have been a variation of .02%. The variance table was promulgated to ensure the accuracy of the machine. A reading of "INVALID SAMPLE" does nothing to undermine the machine's accuracy. Rule 325.2655(1)(f) further states that the first sample is sufficient to meet the evidentiary requirements of MCL 257.625c. The rule did not require the deputy to wait an additional 15 minutes and then administer a third test. The fact that a confirming test result was not obtained goes solely to the weight of the evidence.

Defendant also argued that under the administrative rules if an invalid sample reading is obtained the reason for that reading may have been the presence of mouth alcohol, which would interfere with the test. Under the rules, if an invalid sample is obtained the officer **should** start a new 15-minute observation period and go through the test procedure again. The court held here that **should** is not the same as **shall** and that the additional test was not required.

Add to page 15-4 under personal protection orders
Stalking PPOs require more than one continuos contact

📖 Poboursky v Gee, C/A no. 226550 (December 21, 2001)

The victim in this case was physically assaulted by another man who also threaten to kill him. He sought and obtained a stalking PPO against his attacker based on this one incident. The Court of Appeals terminated the PPO.

HELD – For stalking the pattern of conduct must consist of 2 or more separate noncontinuous acts evidencing a continuity of purpose. "The application for a PPO filed by petitioner alleged a single incident comprising a series of continuous acts, each immediately following the other, in which respondent inflicted physical harm and threatened further harm. Thus, while petitioner alleged a series of acts evidencing a continuity of purpose, the acts were not separate and noncontinuous. Because the petition did not allege conduct prohibited under MCL 750.411h, the trial court erred in entering the order and in denying the motion to set it aside.

Add to page 15-4 under PPOs
HB 5273 - MCL 600.2950a (effective 4-1-2002)

PPOs cannot be issued to a person less than 10 years old. Subsection 25©

Add to page 15-4 under PPOs
P.A. 197 – MCL 600.2950l and m (effective 4-1-2002)
Foreign Protection Orders

Sec. 2950l. (1) Law enforcement officers, prosecutors, and the court shall enforce a foreign protection order other than a conditional release order or probation order issued by a court in a criminal proceeding in the same manner that they would enforce a personal protection order issued in this state under section 2950 or 2950a or section 2(h) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, unless indicated otherwise in this section.

(2) A foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding shall be enforced pursuant to section 2950m of this act, section 15(1)(g) of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15, the uniform criminal extradition act, 1937 PA 144, MCL 780.1 to 780.31, or the uniform rendition of accused persons act, 1968 PA 281, MCL 780.41 to 780.45.

(3) A law enforcement officer may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the law enforcement officer from any source if the putative foreign protection order appears to contain all of the following:

(a) The names of the parties.
(b) The date the protection order was issued, which is prior to the date when enforcement is sought.
(c) The terms and conditions against respondent.
(d) The name of the issuing court.
(e) The signature of or on behalf of a judicial officer.
(f) No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.

(4) The fact that a putative foreign protection order that an officer has been shown cannot be verified on L.E.I.N. or the NCIC national protection order file is not grounds for a law enforcement officer to refuse to enforce the terms of the putative foreign protection order, unless it is apparent to the officer that the putative foreign protection order is invalid. A law enforcement officer may rely upon the statement of petitioner that the putative foreign protection order that has been shown to the officer remains in effect and may rely upon the statement of petitioner or respondent that respondent has received notice of that order.

(5) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, the law enforcement officer shall attempt to verify through L.E.I.N., or the NCIC protection order file, administrative messaging, contacting the court that issued the foreign protection order, contacting the law enforcement agency in the issuing jurisdiction, contacting the issuing jurisdiction's protection order registry, or any other method the law enforcement officer believes to be reliable, the existence of the foreign protection order and all of the following:

(a) The names of the parties.
(b) The date the foreign protection order was issued, which is prior to the date when enforcement is sought.
(c) Terms and conditions against respondent.
(d) The name of the issuing court.
(e) No obvious indication that the foreign protection order is invalid, such as an expiration date that is before the date enforcement is sought.

(6) If subsection (5) applies, the law enforcement officer shall enforce the foreign protection order if the existence of the order and the information listed under subsection (5) are verified, subject to subsection (9).

(7) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, and the law enforcement officer cannot verify the order as described in subsection (5), the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law.

(8) When enforcing a foreign protection order, the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties provided for under sections 2950 and 2950a and chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct.

(9) If there is no evidence that the respondent has been served with or received notice of the foreign protection order, the law enforcement officer shall serve the respondent with a copy of the foreign protection order, or advise the respondent about the existence of the foreign protection order, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in this state, and, if the officer is aware of the penalties in the issuing jurisdiction, the penalties for violating the order in the issuing jurisdiction. The officer shall enforce the foreign protection order and shall provide the petitioner, or cause the petitioner to be provided, with proof of service or proof of oral notice. The officer also shall provide the issuing court, or cause the issuing court to be provided, with a

proof of service or proof of oral notice, if the address of the issuing court is apparent on the face of the foreign protection order or otherwise is readily available to the officer. If the foreign protection order is entered into L.E.I.N. or the NCIC protection order file, the officer shall provide the L.E.I.N. or the NCIC protection order file entering agency, or cause the L.E.I.N. or NCIC protection order file entering agency to be provided, with a proof of service or proof of oral notice. If there is no evidence that the respondent has received notice of the foreign protection order, the respondent shall be given an opportunity to comply with the foreign protection order before the officer makes a custodial arrest for violation of the foreign protection order. The failure to comply immediately with the foreign protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the code of criminal procedure, 1927 PA 175, MCL 712A.14.

(10) A law enforcement officer, prosecutor, or court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order. This immunity does not in any manner limit or imply an absence of immunity in other circumstances.

Sec. 2950m. A person who violates a foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of $500.00, or both.

Sec. 2950h. As used in this section and sections 2950i, 2950j, 2950k, 2950l, and 2950m:

- Foreign protection order means an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person[1]s violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. Foreign protection order includes temporary and final orders issued by civil and criminal courts (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other federal law), whether obtained by filing an independent action or by joining a claim to an action, if a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

Sec. 2950i. (1) A foreign protection order is valid if all of the following conditions are met:

- The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.
- Reasonable notice and opportunity to be heard is given to the respondent sufficient to protect the respondent[1]s right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided to the respondent within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent[1]s due process rights.

(2) All of the following may be affirmative defenses to any charge or process filed seeking enforcement of a foreign protection order:

- Lack of jurisdiction by the issuing court over the parties or subject matter.
- Failure to provide notice and opportunity to be heard.
- Lack of filing of a complaint, petition, or motion by or on behalf of a person seeking protection in a civil foreign protection order.

Sec. 2950j. (1) A valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as if it were issued in this state.
(2) A child custody or support provision within a valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as any provision within a personal protection order issued in this state. This subsection shall not be construed to preclude law enforcement officers[1] compliance with the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

Sec. 2950k. (1) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is entitled to full faith and credit against the respondent and is enforceable against the respondent.
(2) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is not entitled to full faith and credit and is not enforceable against the petitioner unless both of the following conditions are met:

- The respondent filed a cross- or counter-petition, complaint, or other written pleading seeking the foreign protection order.
- The issuing court made specific findings against both the petitioner and the respondent and determined that each party was entitled to relief.

Add to page 15-4 under PPOs
HB 5299 – MCL 600.2950 (effective 4-1-2002)

If the respondent violates the personal protection order in a jurisdiction other than in this state, the respondent is subject to the enforcement

procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

Add to page 15-4 under PPOs
HB 5278 – MCL 28.422b (effective 4-1-2002)

The department of state police shall not send written notice of an entry of an order or disposition into the law enforcement information network as required for a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, until that department has received notice that the respondent of the order has been served with or has received notice of the personal protection order.

Add to page 15-8 under Domestic Violence reports
SB 754 – MCL 764.15c (Effective 4-1-2002)

By June 1, 2002, the department of state police shall develop a standard domestic violence report form.

By October 1, 2002 a peace officer shall use the standard domestic violence incident form or a form substantially similar to that standard form to report a domestic violence incident.

Domestic violence incident means an incident reported to a law enforcement agency involving allegations of 1 or both of the following:

- A violation of a personal protection order issued under section, or a violation of a valid **foreign protection order**.
- A crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child in common, an individual with whom **he or she has or has had a dating relationship**, or an individual who resides or has resided in the same household.

Add to page 17-4
Changed definition of "Governmental function" for liability purposes.

P.A. 131 of 2001 (Effective October 15, 2001) – MCL 691.1401

"Governmental function" is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity, as directed or assigned by his or her public employer for the purpose of public safety, performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority."

Add to page 18-6 under Technical Trespass
Technical trespass for Fourth Amendment purposes.

🕮 People v Custer, C/A No. 218817 (December 4, 2001)

Officers had reason to believe that a house contained controlled substances based on pictures located during a traffic stop. The officers approached the residence and peered through the front window using his flashlight. Inside he observed similar furniture as that depicted in the pictures. Based on these observations a search warrant was sought and executed. The Court of Appeals upheld the observations made by the officers.

The officer went to the defendant's home in order to determine if it was the residence depicted in the photographs. In addition, we note that it was only after the officer arrived at the front entrance of the home that he noticed that the window immediately to the left of the door had its inside blinds pulled up, allowing him, with the aid of light from his flashlight and defendant's neighbor's house, to observe what was in the room. Because the officer was properly present on defendant's porch when he observed the objects in defendant's window, his actions were entirely proper.

The defendant also argued that even if the observations were valid, there was not enough probable cause to search. “Here, the properly seized and examined photographs depicted (1) Holder carrying two one-pound bags of marijuana with additional one-pound bags of marijuana on a coffee table in front of him, (2) a number of one-pound bags of marijuana and (3) Holder sitting in a chair next to a suitcase that contained numerous one-pound bags of marijuana. As a result of these photographs, an officer went to defendant's residence where he observed objects similar to those seen in the photographs. Based on these observations, there was probable cause to believe that defendant's residence was the same residence depicted in the validly seized and examined photographs. In addition, we note that defendant's cohort, Holder, was carrying both a large amount of cash in small denominations and a baggie of marijuana at the time he was arrested, and that while being placed in the squad car, Holder yelled to defendant "[d]on't tell them a f_____ thing." Further, defendant admitted to being in the presence of Holder all evening. Because defendant admitted to being with Holder the entire evening and since objects in photographs matched objects in defendant's residence, probable cause existed to issue a search warrant for defendant's home.”

Add to page 18-7
An unauthorized driver may have standing

📖 United States v Smith, 2001 WL 984951 C.A.6 (Aug. 29, 2001)

Defendant was stopped while driving a rental car. His wife was listed as the sole driver however his credit card was used to secure the vehicle. The Sixth Circuit concluded that even though he was not listed as an authorized driver, he still had standing to challenge the search. The following factors established standing: "First, Smith was a licensed driver. Second, Smith was able to present the rental agreement and provided the officer with sufficient information regarding the vehicle. Third, Smith was given the vehicle by his wife, who was listed as the authorized driver. Fourth, Smith's wife had given him permission to drive the vehicle. Fifth, and most significantly, Smith personally had a business relationship with the rental company. Smith called the rental company to reserve the vehicle and was given a reservation number. He provided the company with his credit card number, and that credit card was subsequently billed for the rental of the vehicle. His wife, Tracy Smith, picked up the vehicle using the confirmation number given to Smith by the company. Smith had an intimate relationship with Tracy Smith, the authorized driver of the vehicle who gave him permission to drive it."

Add to page 18-8 under pretext stops
Traffic stop is valid where officer has probable cause to believe violation has occurred.

📖 People v Davis, C/A No. 220087 (December 11, 2001)

Defendant was stopped on I-94 for a vision obstruction, weaving within the lane of traffic and speeding. Upon contacting him the officer requested to see his driver's license and vehicle information. When he was checked in LEIN it was determined that there were several warrants for his arrest. Following his arrest, the officer searched the car and found a black leather jacket with a bulge in the sleeve. The officers reached into the sleeve and located 261 grams of cocaine.

The defendant argued on appeal that the stop was unconstitutional and that the cocaine should be suppressed as the fruit of the poisonous tree. The Court of Appeals disagreed. "We note that Officer Hopkins testified that he intended to pull defendant over because defendant's view was being obstructed by air fresheners dangling from the rearview mirror of the car. Since both defendant

and his mother testified that there was at least one air freshener hanging from the review mirror, the record supports the conclusion that defendant may have been in violation of M.C.L. § 257.709(1)(c). We also note, that while denied by defendant, Officer Hopkins testified that defendant's car was weaving in its lane and speeding at the time of the stop. Hence, Officer Hopkins also had probable cause to believe that defendant was in violation of M.C.L. § 257.642(1)(a) and M.C.L. § 257.628(4). Because Officer Hopkins had probable cause to believe defendant was in violation of three traffic laws, the stop was permissible."

Defendant also argued that since he cooperated with the officer in providing his information that the stop should have lasted no longer than what was necessary to issue the citation and release and that the officer should not have taken the additional time to file check him in LEIN. The Court again disagreed. "We note that a review of Michigan cases demonstrates a recognition that the running of LEIN checks of vehicle drivers is a routine and accepted practice by the police in this state. A LEIN check is an unobtrusive investigative tool employed by the police to retrieve information regarding an individual's driving record and to determine whether there are any outstanding warrants for his arrest--all matters of public record. As such, a LEIN check does not involve an unlawful disregard for individual liberties. Accordingly, because this amount of time is a minimal invasion in light of the substantial government interest in arresting citizens wanted on outstanding warrants, we find Officer Hopkins's use of the LEIN check in this case did not violate defendant's constitutional rights."

Add to page 18-18
No-Knock Warrant

📖 United States v Johnson, 267 F.3d 498 6th Cir.(Ky.) 2001

Officers had information that drug dealers from Detroit who were in the process of selling drugs occupied a residence. Included in an affidavit for a search warrant was the following request: "A no-knock search warrant is requested because the informant states that deals inside the house are usually done near the bathroom in case the police should come in the house. Also, it has been the experience of Narcotics detectives that most of the dealers from Detroit have been armed when apprehended. Within the past 48 hours the affiant made a controlled purchase of narcotics at 163 Rand Ave. through a confidential informant. This informant has made 9 prior controlled purchases and provided numerous pieces of information that has [sic] been independently corroborated."

Based on this information the trial court issued a no-knock warrant due to exigent circumstances. The Sixth Circuit upheld the no-knock warrant and entry. "Had the affidavit merely contained generalized allegations of drug dealing within the residence, the government would not have demonstrated the kind of exigency required to justify a no-knock warrant. Likewise, boilerplate language concerning the possible destruction of evidence would not be sufficient. Where, as here, however, the affidavit in support of the warrant application includes recent, reliable information that drug transactions are occurring in the bathroom 'in case the police should come in the house,' it is reasonable to infer that this precaution is taken to facilitate the destruction of evidence and thus a no-knock warrant is within the range of alternatives available to the issuing judge or magistrate."

Add to page 18-18
Violation of knock and announce

📖 U.S. v Maher, Case No. 1:01:CR:64-01 (August 8, 2001)

A Federal District Court Judge suppressed evidence seized where officers executed a search warrant by knocking on the door loudly, waiting 5 seconds, knocking again loudly and again waiting five seconds. The officer then knock a third time and this time also yelled, "police search warrant." He then waited two seconds before forcing the door open with a ram. The Court held that since the officers did not announce they were officers until after the final knock the reasonableness of time began after the announcement and that two seconds was not enough time for the entry.

Add to page 18-28
Pat Down Searches

📖 People v Custer, 465 Mich. 319 (2001)

During a valid pat down, the officer felt what he believed to be blotter acid in defendant's pocket and placed it on the roof of the car before completing the pat down. He then retrieved the objects, which turned out to be three photographs facing down. He turned them over and observed that the photographs depicted defendant's companion in a house containing large quantities of marijuana. The police went to the house and saw similar furnishings to those in the photographs. A search warrant was obtained and fifteen pounds of marijuana was seized. The question presented was

whether the officer could lawfully turn the pictures over under the plain feel doctrine.

HELD – In conducting a patdown search, an officer may seize items that the officer has probable cause to believe are contraband from the plain feel. In this case, the officer had probable cause to believe the object was a card of blotter acid based on his training and experience. The next question is whether the officer may lawfully turn the pictures over to examine them. The Michigan Supreme Court held the further examination of the pictures was lawful. "Once an object is lawfully seized, a cursory examination of the exterior of that object, like that which occurred here, is not, in our judgment, a constitutional 'search' for purposes of the Fourth Amendment…. We conclude that the exterior of an item that is validly seized during a pat down search may be examined without a search warrant, even if the officer subsequently learns that the item is not the contraband the officer initially thought that it was before the seizure."

Add to page 18-30
"Knock and talk" is a valid procedure if done properly

📖 People v Frohriep, C/A No. 223755 (October 12, 2001)

Officers received information that defendant may have controlled substances on his property. Since there was not sufficient evidence to obtain a search warrant the officers decided to do a "knock and talk." Officer described the procedure as going to the suspect house, engaging in conversation and attempting to gain consent to search.

In this case officers located the subject in an open area between his house and barn. They identified themselves and informed him that they believed he had controlled substances on the premises and asked for consent to search. The trial court determined that the defendant consented to a search. One officer entered the pole barn and located marijuana in a freezer. They then asked to enter a trailer that was locked. The subject retrieved the key and opened the door where they found scales and he admitted to using the scales to weigh marijuana. At that point, the subject stated, "wait, wait, just a minute." The officers asked him to sign a consent form and he refused. The officers then obtained a search warrant and found additional evidence.

The Court of Appeals first upheld the "knock and talk" procedure. "We conclude that in the context of 'knock and talk' the mere fact

that the officers initiated contact with a citizen does not implicate constitutional protections. It is unreasonable to think that simply because one is at home that they are free from having the police come to their house and initiate a conversation. The fact that the motive for the contact is an attempt to secure permission to conduct a search does not change that reasoning. We find nothing within a constitutional framework that would preclude the police from setting the process in motion by initiating contact and, consequently, we hold that the 'knock and talk' tactic employed by the police in this case is not unconstitutional."

"**That is not to say, however, that the 'knock and talk' procedure is without constitutional implications**. Anytime the police initiate a procedure, whether by search warrant or otherwise, the particular circumstances are subject to judicial review to ensure compliance with general constitutional protections. Accordingly, what happens within the context of a 'knock and talk' contact and any resulting search is certainly subject to judicial review. For example, a person's Fourth Amendment right to be free of unreasonable searches and seizures may be implicated where a person, under particular circumstances, does not feel free to leave or where consent to search is coerced."

In an analysis of the facts of this case, the Court held that the Fourth Amendment had not been violated. "Here, the 'knock and talk' procedure that the police utilized involved police officers initiating an ordinary citizen contact. The police action, i.e., approaching defendant as he was standing in his yard, did not amount to a seizure of defendant. The police simply identified themselves, told defendant they had been informed that he had controlled substances on his property, and asked defendant's permission to 'look around.' There is no indication that defendant was not free to end the encounter. Indeed, the testimony at the suppression hearing does not support the notion that defendant felt threatened or coerced. Thus, the initial contact with defendant did not have any constitutional implications on the basis of a seizure because there is no indication that any seizure of defendant occurred. Although we can envision a scenario where the police conduct when executing the 'knock and talk' procedure evidences an unreasonable seizure or results in an unreasonable search, the facts in the present record do not suggest such a situation."

Add to page 18-32 under Terry stops
Reasonable suspicion to detain

The officer in this case based reasonable suspicion to detain the defendant on a number of factors. One was that the defendant was nervous that his passenger appeared “stoned” and had white mucus around his mouth. The vehicle was messy with food wrappers and body odor was emanating from the vehicle as though the occupants had not bathed for the duration of their trip. The Sixth Circuit upheld the lower courts ruling that these factors did not establish reasonable suspicion.

HELD – “Viewing these factors in the totality of the circumstances, we conclude that Officer Fulcher did not have a reasonable, articulable suspicion of criminal activity sufficient to detain Steven Smith after the completion of the initial traffic stop. Although the government presented several factors which could, under different circumstances, and in combination with other factors, support a finding of reasonable suspicion, under the facts of this case, they merit little, if any, weight in our analysis. We give little weight to Steven's initial nervousness and his prompt presentation of the rental agreement, Randy's "stoned" appearance, the fact that neither Steven nor Randy was listed as an authorized driver, and the fact that Officer Fulcher doubted Steven's travel plans, because they are generally innocent factors, a conclusion supported by the fact that they did not warrant Officer Fulcher's further investigation at the time. Thus, we are left to consider Steven's nervousness during questions about narcotics and weapons, the body odor emanating from the vehicle, and the unkempt condition of the vehicle. With respect to Steven's nervousness, however, it was minor in degree. The food wrappers, soda cans and cooler in the vehicle are factors which have been given little, if any, weight by other courts considering the question of reasonable suspicion, and were consistent with Steven's travel plans. Likewise, the men's body odor receives little weight in our determination. Even considering all of the government's proffered factors as a whole, we must conclude that Officer Fulcher did not possess a reasonable, articulable suspicion that criminal activity was afoot. He was, perhaps, just shy of establishing reasonable suspicion. If he had pursued his initial hunch, and had asked additional questions regarding Steven's rental vehicle or travel plans, or if he had further investigated Randy's condition, then perhaps he would have uncovered a discrepancy or sufficiently nervous behavior, or some other objective, reliable indication of criminal activity.”

Add to page 18-32 under Terry Stops
Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.

📖 United States v. Knights, 122 S. Ct. 587 (2001)

Defendant was placed on probation for drug violations. Part of the order was that he submit to a search at anytime, with or without a warrant, by any probation or law enforcement officer. Subsequently, officers suspected that he was involved in a number of arsons against a power company. At one point a detective who was investigating him observed a Molotov cocktail and other explosive devices in a pick up truck parked in his driveway. After viewing the objects in the pick up, the detective entered the apartment to search under the probation order. Inside the residence, the officer located incriminating evidence against the defendant. The trial court dismissed the charges holding that although the detective had "reasonable suspicion" to believe Knights was involved with incendiary materials, the search was for "investigatory " rather then "probationary" purposes". The United States Supreme Court reversed.

HELD- The United States Supreme Court held that the warrantless search of the apartment, supported by reasonable suspicion and authorized by a condition of his probation, was reasonable within the meaning of the Fourth Amendment. "The Fourth Amendments touchstone is reasonableness, and a search's reasonableness is determined by assessing, on one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed to promote legitimate governmental interest. Knights status as a probationer subject to a search condition informs both sides of that balance. The sentencing judge reasonably concluded that the search condition would further the two primary goals of probation-rehabilitation and protecting society from future criminal violations. Knights was unambiguously informed of the search condition. Thus, Knight's reasonable expectation of privacy was significantly diminished. In assessing the governmental interest, it must be remembered that the very assumption of probation is that the probationer is more likely than others to violate the law. The State's interest in apprehending criminal law violators, thereby protecting potential victims, may justifiably focus on probationers in a way that it does on the ordinary citizen. On balance, no more than reasonable suspicion was required to search petitioner's residence. Although the Fourth Amendment ordinarily requires probable cause, a lesser degree satisfies the Constitution when the balance of governmental and private interest makes such a standard reasonable."

Add to page 18-33 under vehicle stops
Reasonable suspicion will be based on the totality of the circumstances

🕮 United States v Arvizu, 122 S.Ct. 744 (2002)

A border patrol officer was notified that a sensor had been triggered on a roadway he knew to be used by smugglers. The roadway went around a border patrol checkpoint. The officer found the timing of the sensor to be of interested because it was near shift change and the officer knew that smugglers studied when shift changes occurred so that they could pass by when fewer officers were on patrol. The officer located the vehicle and observed that it was a mini van, which the officer knew was a type of vehicle utilized by drug traffickers. As the vehicle approached the marked patrol car, it slowed dramatically from 50 miles per hour to 25. There was a man and woman and three children in the vehicle. The driver appeared stiff and his posture was very ridged. As he drove by he acted as if the patrol officer was not there. The officer said he thought that was unusual because from his experience most people look over to see what is going on, and that most drivers give border patrol officers a friendly wave. The officer also noticed the knees of the children sitting in the back seat were unusually high, as if their feet were resting on some cargo. The officer then followed the van and observed the kids, while still facing forward, put there hands up at the same time and began waving in an abnormal manner. It appeared to the officer that they were being instructed to wave at the officer. The vehicle then approached an intersection. The vehicle put on its signal and then the driver turned it off and then it put it back on again and abruptly turned away from the check point and headed for an area that had to be driven by a four wheel drive type of vehicles. The officer than ran a radio check on the vehicle and learned that it came from a location in a near by town that was notorious for alien and narcotics smuggling. At this point, the officer stopped the vehicle and asked the driver for consent to search the vehicle. Consent was granted and the officer found 128.85 pounds of marijuana in the vehicle part of which was in a duffel bag under the children's feet.

The question presented in this case was whether there was sufficient reasonable suspicion that crime was afoot to justify the stop of the vehicle. "When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude

an untrained person.' Having considered the totality of the circumstances and given due weight to the factual inferences drawn by the law enforcement officer and District Court Judge, we hold that the officer had reasonable suspicion to believe that respondent was engaged in illegal activity. It was reasonable for the officer to infer from his observations, his registration check, and his experience as a border patrol agent that respondent had set out from Douglas along a little-traveled route used by smugglers to avoid the 191 checkpoint. The officer's knowledge further supported a commonsense inference that respondent intended to pass through the area at a time when officers would be leaving their back roads patrols to change shifts. The likelihood that respondent and his family were on a picnic outing was diminished by the fact that the minivan had turned away from the known recreational areas. Corroborating this inference was the fact that recreational areas farther to the north would have been easier to reach by taking 191, as opposed to the 40- to-50-mile trip on unpaved and primitive roads. The children's elevated knees suggested the existence of concealed cargo in the passenger compartment. Finally, for the reasons we have given, the officer's assessment of respondent's reactions upon seeing him and the children's mechanical-like waving, which continued for a full four to five minutes, were entitled to some weight.

"Respondent argues that we must rule in his favor because the facts suggested a family in a minivan on a holiday outing. A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct. Undoubtedly, each of these factors alone is susceptible to innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for the officer's stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment."

Add to page 18-38 under Hot Pursuit
Absent exigent circumstances or a warrant, entry into a residence may not occur and all evidence seized may be suppressed.

📖 United States v. Saari, 272 F. 3d 804 6th Cir. (Tenn) 2001

Four officers responded to a call regarding "shots fired" at the residence of the defendant's ex-wife. It was determined that no shots had actually been fired but the defendant was observed standing outside the window holding what appeared to be a pistol. Prior to proceeding to the defendant's apartment, officers were informed by the victim that the defendant was armed at all times.

Two of the responding Officers testified that they had received information from an “unknown source” that the defendant possessed explosives, belonged to a militia group and was heavily armed.

Upon approaching the residence one officer testified that the front door to the defendant’s apartment was closed and that the shades drawn, but he did observed some movement. Officers positioned themselves around the exterior landing of the apartment door and the steps leading down from the landing with their weapons drawn. Two officers knocked forcefully on the defendant’s door and identified themselves as police as defendant opened the door. They then ordered him out. Defendant stated that he stepped out because he was ordered to do so and he was afraid of being shot. Defendant exited his apartment with his hands above his head. With guns pointed at the defendant, one of the officers asked if the defendant had any weapons. Defendant informed the officers that he had a gun in the waistband of his pants which the officers removed and placed the defendant in handcuffs.

After handcuffing the defendant, officers entered his apartment. Over defendant’s vocal objections officers searched his apartment and discovered rifles in a walk-in closet and in a closed bag in the bedroom. Officers also found a pistol and blow-dart gun in the bedroom. The officers did not remove these items but pursuant to a search warrant issued two days later, the officers seized the items. The affidavit in support of the search warrant was based solely upon knowledge that the officers acquired while they were in the apartment on the day of defendant’s arrest.

“The defendant was peaceably occupying his home when officers arrived, and there was no proof that anyone was being threatened inside. There were also no exigencies, which permitted the Defendants immediate arrest. Without the threat of immediate danger that would have given rise to exigent circumstances, the officer’s safety did not require them to summon the defendant out of his house at gunpoint before obtaining an arrest warrant. There was no danger of escape or evidence that defendant cold readily dispose of the weaponry he was accused of possessing. The ‘unsubstantiated information’ about explosive by an unidentified person was too vague and general to constitute an immediate threat to the safety of the officers and the public.”

Added to update to this point_____ 03/08/02